

**IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

UNITED STATES SECURITIES AND
EXCHANGE COMMISSION,

Plaintiff,

v.

EQUITYBUILD, INC., EQUITYBUILD
FINANCE, LLC, JEROME H. COHEN, and
SHAUN D. COHEN,

Defendants.

Civil Action No. 1:18-cv-5587

Judge John Z. Lee

Magistrate Judge Young B. Kim

**EXHIBIT A TO BC57, LLC'S MOTION TO COMPEL
RECEIVER DEPOSITION [Dkt. 1191]**

BC57, LLC, pursuant to the Magistrate Judge's Order of this date [Dkt. 1192], files the following
Exhibit A to BC57, LLC's Motion to Compel Receiver Deposition [Dkt. 1191]:

- Motion Hearing Transcript of November 18, 2021

BC57, LLC

/s/David E. Hart

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Robert M. Horwitz

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Dated: February 22, 2022

CERTIFICATE OF SERVICE

I hereby certify that on February 22, 2022, I caused the foregoing Exhibit A to BC57' s Motion to Compel Receiver Deposition to be electronically filed with the Clerk of Court through the Court's CM/ECF system, which sent electronic notification of such filing to all parties of record, and e-mailed to ebgroup1service@rdaplawn.net, which is designed to send electronic notification of such filing to all parties involved in Group 1.

/s/ David E. Hart

David E. Hart

Exhibit “A”

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

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|----|--------------------------------|---|----------------------|
| 1 | UNITED STATES SECURITIES AND |) | Docket No. 18 C 5587 |
| 2 | EXCHANGE COMMISSION, |) | |
| 3 | |) | |
| 4 | Plaintiffs, |) | |
| 5 | |) | |
| 6 | vs. |) | |
| 7 | |) | |
| 8 | EQUITYBUILD, INC., EQUITYBUILD |) | |
| 9 | FINANCE, LLC, JEROME H. COHEN, |) | |
| 10 | AND SHAUN D. COHEN, |) | Chicago, Illinois |
| 11 | |) | November 18, 2021 |
| 12 | Defendants. |) | 3:00 o'clock p.m. |

TRANSCRIPT OF PROCEEDINGS - VIDEOCONFERENCE MOTIONS
BEFORE THE HONORABLE JOHN Z. LEE

VIDEOCONFERENCE APPEARANCES:

| | | |
|----|----------------------------|-----------------------------------|
| 14 | For the Plaintiff: | U.S. SECURITIES & EXCHANGE |
| 15 | | COMMISSION |
| 16 | | BY: MR. BENJAMIN J. HANAUER |
| 17 | | 175 W. Jackson Blvd., Suite 900 |
| 18 | | Chicago, Illinois 60604 |
| 19 | For the Receiver: | RACHLIS, DUFF, PEEL & KAPLAN, LLC |
| 20 | | BY: MR. MICHAEL RACHLIS |
| 21 | | MS. JODI ROSEN WINE |
| 22 | | 542 South Dearborn, Suite 900 |
| 23 | | Chicago, Illinois 60605 |
| 24 | Federal Home Loan Mortgage | DYKEMA GOSSETT, PLLC |
| 25 | Corporation, Wilmington | BY: MR. TODD GALE |
| | Trust, Citibank, Federal | 10 South Wacker Drive, Suite 2300 |
| | National Mortgage Assoc., | Chicago, Illinois 60606 |
| | U.S. Bank, Sabal TL, | |
| | Midland Loan Svcs., BC57, | |
| | and UBS AG:, | |

1 APPEARANCES (Cont'd):

2 For U.S. Bank as Trustee: FOLEY & LARDNER, LLP
3 BY: MR. ANDREW T. McCLAIN
4 321 N. Clark St., Suite 2800
Chicago, Illinois 60654

5 For Midland Loan Svcs.: AKERMAN, LLP
6 BY: MR. MICHAEL D. NAPOLI
7 2001 Ross Avenue, Suite 3600
Dallas, Texas 75201

8 For Intervening Investors: BOODELL & DOMANSKIS, LLC
9 BY: MR. MAX A. STEIN
10 1 North Franklin, Suite 1200
Chicago, Illinois 60606

11 Also Present: MR. KEVIN B. DUFF, Receiver

12
13 Court Reporter: MR. JOSEPH RICKHOFF
14 Official Court Reporter
219 S. Dearborn St., Suite 2128
15 Chicago, Illinois 60604
(312) 435-5562

16 * * * * *

17 PROCEEDINGS RECORDED BY
18 MECHANICAL STENOGRAPHY
TRANSCRIPT PRODUCED BY COMPUTER

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1 (Proceedings had via videoconference:)

2 THE CLERK: 18 CV 5587, SEC vs. Equitybuild.

3 THE COURT: Good afternoon.

4 Who is appearing on behalf of the SEC?

5 MR. HANAUER: Good afternoon, your Honor, Ben Hanauer
6 for the SEC.

7 THE COURT: Who is appearing on behalf of the
8 receiver?

9 MR. RACHLIS: Good afternoon, your Honor, Michael
10 Rachlis and Jody Rosen Wine on behalf of the receiver. The
11 receiver Kevin Duff is also on the line, as well.

12 THE COURT: Good afternoon.

13 So, there are a number of other attorneys who are
14 joining us for this videoconference who have motions up. Can
15 you go ahead and identify yourselves for the record, please.

16 MR. STEIN: Good afternoon, your Honor, Max Stein on
17 behalf of certain individual investor lenders.

18 MR. McCLAIN: Good afternoon, your Honor, Andrew
19 McClain on behalf of U.S. Bank as trustee.

20 MR. GALE: Good afternoon, your Honor, Todd Gale. I
21 represent a number of institutional investors, including in
22 Group 1 BC57, LLC.

23 THE COURT: Anyone else?

24 (No response.)

25 THE COURT: Okay.

1 So, as I said, there are a couple of motions that I
2 want to address today. The first one is the motion for leave
3 to include an expert witness disclosure in the position
4 statement. I have reviewed the briefs, and I wondered if
5 the -- I was trying to determine what exactly the particular
6 witness would have to say with regard to these matters.

7 And I take it that it's about the reasonableness of
8 relying on particular types of disclosures as opposed to
9 others; is that correct?

10 MR. GALE: Yes, your Honor.

11 Todd Gale.

12 And that is correct.

13 THE COURT: And, so, can you tell me from the
14 institutional lenders' standpoint what exactly the argument is
15 that the expert will be trying to address.

16 MR. GALE: Your Honor, the expert Bush Nielson has
17 written the manuals that are used by title examiners and title
18 readers so that they can determine what sorts of documentation
19 they should rely upon, including things like payoff statements
20 and release deeds.

21 In this case, we anticipate that the receiver and/or
22 the SEC and/or certain individual lenders will make the
23 argument that it was not rely- -- it was not reasonable for
24 the title examiners here to rely upon the documents upon which
25 they relied. Because Mr. Nielson is in a very good position

1 to understand exactly what sort of documents those people
2 would rely upon -- and we would, of course, anticipate that in
3 his report he would discuss his background, so that the Court
4 would be in a position to determine whether or not his
5 testimony would assist the Court in making these
6 determinations -- we think that Mr. Nielson should be allowed
7 to testify on those things.

8 And, as we understand it, your Honor has already
9 granted the motion so that we can include his expert report
10 with our position paper when it is filed on December 9th.

11 We are well aware of the comments that have been
12 made, including those that were excerpted by the SEC in their
13 statement regarding your Honor having granted our motion for
14 leave to include Mr. Nielson's report. We are not going to
15 have him testify as an expert on what the law is or is not.
16 We are very aware that that is your Honor's province and it's
17 not the place of an expert witness to come in and testify
18 about.

19 THE COURT: To what the industry norms and practices
20 were with regard to what information that people in the
21 industry would rely on when making these determinations?

22 MR. GALE: Correct.

23 THE COURT: Mr. Rachlis, Mr. Hanauer?

24 MR. HANAUER: Yes. Thank you, your Honor. This is
25 Ben Hanauer for the SEC.

1 Without seeing a report, it's very difficult to say
2 whether it would comport with the Court's previous statements
3 about not wanting real estate lawyers to be expert witnesses.

4 I can say that the positions that the institutional
5 lenders have taken to date have been that the -- their
6 reliance is based on provisions of the Illinois Mortgage Act.
7 And I would think that we would not need a real estate lawyer
8 to come in and say industry custom and practice is to follow
9 the Mortgage Act.

10 So, the question of whether there should be an expert
11 in the first place, the Court said what it said, but it's
12 harder to say in a vacuum. I think the more important point
13 the SEC was trying to make having not said the report, is that
14 it would make sense for all the claimants, including a large
15 number of pro se investors, to have the opportunity to see the
16 report, either take the deposition or sit in on other
17 claimants taking the deposition before everyone is putting pen
18 to paper on their position papers and putting things in that
19 may not be based on a complete evidentiary record, and
20 especially given that these are -- most of the claimants
21 appear to be pro se today.

22 THE COURT: And, Mr. Hanauer, the -- do you agree
23 with the general proposition that the industry standard and
24 norms as to what people reviewing such documents relied upon,
25 that that is relevant to or may be relevant to the claims and

1 defenses asserted with regard to these properties?

2 MR. HANAUER: It could be. I mean, the evidence
3 we've seen to date suggests the Court may not even have to get
4 to that question based on what's in these purported releases,
5 which I think just all the more suggests that if there is
6 going to be an expert report, first of all, it should comply
7 with Rule 26(a)(2); and, second, all the other claimants
8 should have a chance to depose the expert and probe the basis
9 of his opinions.

10 THE COURT: Okay.

11 Mr. Rachlis, do you have anything to add to that?

12 MR. RACHLIS: Yes, your Honor. Thank you.

13 I fully agree with Mr. Hanauer's points that he's
14 raised. But I think as to your Honor's question about whether
15 or not this may be relevant to the inquiries that may be made
16 here, I think the answer is it may be relevant.

17 The reasonableness of their -- of what they reviewed
18 and what occurred after that review, whether it was followed
19 up in any way or not, does address -- at least may be related
20 to issues of their own reasonable reliance, as well as inquiry
21 notice questions. And as such, I certainly can understand why
22 and how this may be relevant to those concerns.

23 But I also agree with Mr. Hanauer's points that have
24 been raised and how it does impact the schedule and what
25 the -- what all of the claimants may need to do as a result of

1 having this expert now part of this process.

2 THE COURT: So, talk to me about, Mr. Hanauer, kind
3 of how you see -- or, Mr. Rachlis, rather -- how you see this
4 disclosure and expert discovery process impacting the
5 schedule.

6 MR. RACHLIS: Your Honor, there was discussion on
7 this issue amongst representatives of the claimants --
8 Mr. Stein representing certain individual investors;
9 Mr. Hanauer; Mr. Gale; the receiver's representatives -- in an
10 effort to try and discuss these issues, and that led to a
11 motion being submitted within the last week to ten days.

12 And in there, it basically, in very broad-based
13 summary, extended the schedule approximately 45, 50 days. And
14 the reason for that is, as Mr. Hanauer alluded to, it would
15 allow the claimants the opportunity to depose -- well, one, to
16 see this expert report, which is due on December 9th as part
17 of their initial disclosure from the claimants. It allows the
18 deposition to then occur. It allows all of the stakeholders,
19 if you will, in this Group 1 process the opportunity to
20 evaluate those statements, to possibly come up with their own
21 rebuttal if necessary.

22 And, then, I think as contemplated originally through
23 this process, we get through the entire period of discovery
24 and, then, go ahead and put pen to paper and proceed forward
25 with position statements, disclosures, and things of that

1 nature.

2 So, it was within the confines of thinking about
3 those -- the impact -- you know, basically, extending
4 discovery to allow these issues to be addressed before the
5 claimants -- before the stakeholders are, basically, ready to
6 write things out. Basically, completing the discovery process
7 and then proceeding forward with those submissions.

8 When you take that all into account, the schedule
9 that was proposed allowed for approximately another 45, 50
10 days. So, rather than concluding as originally anticipated on
11 January 13th with responsive statements from claimants and the
12 SEC, that would be extended to March 3rd, of the new year,
13 2022.

14 So, I'd suggest it's not a large amount of time, but
15 I think it certainly adds degrees of fairness to all
16 participants that would allow them to see this and be prepared
17 in a better way to allow them to see all the discovery.

18 THE COURT: Are there any objections to the proposed
19 schedule that would incorporate expert discovery?

20 MR. GALE: Yes, your Honor.

21 Todd Gale representing BC57.

22 We did, in fact, have conversations; and we were, I
23 thought, close to agreement. The one -- but where it appeared
24 to go off the rails was the receiver asked for additional time
25 within which to disclose any avoidance claims that he might

1 bring. As all on the call know, those avoidance claims were
2 to be disclosed today.

3 We did not see -- and we tried to engage in a
4 discussion to determine and better understand -- how those
5 avoidance claims would be impacted, if at all, by the proposed
6 report of our expert Mr. Nielson. I asked for that. And I'll
7 just be candid. I couldn't understand what receiver's counsel
8 was trying to communicate to us on that. And, so, that's
9 where it fell apart.

10 Most of the rest of what they proposed was not
11 troublesome to us. In fact, what they had originally proposed
12 to us was that Mr. Nielson's report would be due on December
13 9th; that there would be discovery, including a deposition of
14 Mr. Nielson. We did not oppose that. We did not oppose the
15 idea that his report would have to comply with Federal Rules
16 of -- with the Federal Rule of Civil Procedure 26, that deals
17 with expert disclosures.

18 But we did not understand, nor as we talk today do we
19 understand now, why anything that Mr. Nielson would have to
20 say about industry standards and practices and the
21 reasonableness of reliance on certain documents, such as
22 payoff statements and release deeds, have anything whatsoever
23 to do with purported avoidance claims that might be asserted
24 by the receiver that are due today. That's where the
25 discussions fell down.

1 THE COURT: All right. Very good.

2 MR. STEIN: Your Honor --

3 THE COURT: So --

4 MR. STEIN: I'm sorry, your Honor. This is Max
5 Stein.

6 There was actually one other area of disagreement on
7 the motion that I filed. And just to be clear, the motion was
8 denied by the magistrate judge. So, we'll just need to clean
9 that up if there's movement, as it appears that there is.

10 But the other aspect that was not agreed on is we had
11 requested that the costs of deposition -- pardon me, the costs
12 of an expert's time and expenses in sitting for a deposition
13 be covered by the party disclosing the expert. And we made
14 that request because we believed, both as an equitable matter
15 and as an administrative matter, that was a better way to do
16 it, so that the parties taking the deposition didn't have to
17 pay unknown costs to an expert they did not choose. And
18 equitably -- administratively, pardon me -- this meant that
19 each party would only ever have to pay the cost of one
20 expert's deposition time, whereas if it were done strictly
21 according to the rules, which your Honor has previously
22 indicated are not being strictly adhered to, the parties
23 deposing the experts might have to end up paying for multiple
24 expert depositions.

25 THE COURT: All right.

1 Mr. Gale?

2 MR. GALE: We do disagree with that, your Honor. We
3 think that the Federal Rules which make clear that only if
4 manifest injustice would occur, then the party should -- who
5 is taking the discovery, the deposition of the expert, that
6 party should pay for the expert's time and, also, whatever
7 time the expert needed to prepare for the deposition.

8 We see no reason to steer away from that here,
9 because we do not think it would be manifestly unjust for them
10 to pay for the time -- for our expert's time.

11 And for what it's worth -- and I guess the other
12 parties don't know this yet because this would be part of
13 Mr. Nielson's disclosure -- Mr. Nielson's hourly rate is \$375
14 an hour. So, it's not at the very high end of some of the
15 rates that we've seen from experts -- at least I have -- in my
16 practice over the years.

17 THE COURT: All right.

18 So, with regard to the items in dispute, I will agree
19 that the various deadlines, starting with the receiver's
20 disclosure of avoidance claims, can be extended by 45 days.
21 Given the fact that we're going to have additional discovery,
22 I don't see any need to have the disclosure of avoidance
23 claims be submitted any sooner than that.

24 With regard to the expert fees, given that this is a
25 summary proceeding, I do think that it makes sense to have the

1 proponent of the expert be responsible to pay the expert fees
2 and costs for sitting at a deposition. So, that request is
3 granted, as well. I think it's just more equitable that way.
4 If a party wants to retain an expert, then they can do so, but
5 it's at their own cost all the way through.

6 The expert disclosures all do need to comply with
7 Rule 26(a)(2). And to the extent that Magistrate Judge Kim's
8 prior order is inconsistent with this one, it is vacated.

9 MR. STEIN: As a matter of clarification, the motion
10 was Document 1085, and it includes an entirely new schedule
11 that's laid out in the motion. Some of the days may be 45
12 days, some of the days may be slightly off of that, because as
13 -- per your Honor's suggestions, we were going in multiples of
14 seven. So, it might be simplest to review that schedule in
15 the motion and enter a new order based on those dates.

16 THE COURT: All right.

17 Mr. Rachlis, why don't you submit a proposed order to
18 my Proposed Order Inbox with the new dates.

19 MR. RACHLIS: We will do that, your Honor. Thank
20 you.

21 THE COURT: Is there anything else that I need to
22 address with regard to experts, then?

23 MR. GALE: Can I ask for one point of clarification?
24 Because I think I understand one thing, your Honor, but I want
25 to be sure before we move on to the next topic.

1 THE COURT: Okay.

2 MR. GALE: When you say moving the date by 45 days,
3 does that include all parties' position papers that as we --
4 before this call started today would otherwise have been due
5 on December 9th? I just want to make sure we're shooting for
6 the right date on our end.

7 THE COURT: That's correct.

8 MR. GALE: Okay. Good. Thank you.

9 THE COURT: Now I want to move to the joint motion to
10 determine claims process for single-claim properties.

11 Obviously, Mr. Rachlis will be speaking on behalf of
12 the receiver. Who is going to be addressing this motion on
13 behalf of the other movants?

14 MR. McCLAIN: Your Honor, that's myself, Andrew
15 McClain; and Michael Napoli is also on the video.

16 THE COURT: All right.

17 So, Mr. Rachlis, I think I understand, but can you
18 explain why if a property only is subject to a single claim,
19 the receiver should -- why there's any need for any
20 proceedings if it's just a single claim, like just at the
21 basic level.

22 MR. RACHLIS: Okay. Your Honor, in this context, in
23 looking at -- there is going to be a further inquiry into the
24 validity of the claim. Right? So, as the receiver goes ahead
25 and looks at what has been submitted, even when there's no --

1 theoretically, there's only one claim that's been submitted.
2 As to that claim, for example, here there would be some
3 discovery that would be looked at, and it would take two
4 forms. First is the submissions from the single-lien
5 claimant --

6 THE COURT: No, I understand, Mr. Rachlis. I'm sorry
7 to interrupt you.

8 If the single claim is considered -- is invalidated,
9 right, is voided, then what happens to the property and the
10 assets associated with that property?

11 MR. RACHLIS: So, if the single-lien claimant is
12 found, for example, should have been on inquiry notice and,
13 therefore, their secured claim is found -- is turned into an
14 unsecured one, the proceeds from the sale of the property that
15 that claimant was claiming the secured interest in, those
16 proceeds would go to -- would become funds that would be used
17 for unsecured claimants.

18 THE COURT: Unsecured claimants on that property or
19 unsecured claimants generally?

20 MR. RACHLIS: Unsecured claimants generally.

21 I should -- you know, to be fair, now, if there are
22 other claimants on that property -- for example, there could
23 be a -- some other type of trade creditor or something to that
24 effect -- I imagine that they may have some right to those
25 proceeds.

1 So, putting those issues aside, generally, the
2 claim -- the monies would then -- generally speaking, would
3 turn into unsecured funds that would be then utilized for
4 general purposes for the unsecured claimants.

5 THE COURT: And, so, the dispute --

6 Anyway, Mr. McClain, anything you would like to add
7 to that?

8 MR. McCLAIN: Yeah, your Honor.

9 I mean, I understand the point that Mr. Rachlis is
10 making. But I would defer to Mr. Napoli if he wants to
11 elaborate on that, as well. I can get into the points about
12 the discovery that Mr. Rachlis was alluding to, but I would
13 defer to Mr. Napoli if he wanted to elaborate.

14 THE COURT: Mr. Napoli?

15 MR. McCLAIN: I think you're on mute.

16 THE COURT: We can't hear you, Mr. Napoli, for some
17 reason.

18 (Brief pause.)

19 MR. NAPOLI: Is this better, your Honor?

20 THE COURT: It is. Thank you.

21 MR. NAPOLI: Okay.

22 Your Honor, I would tend to agree with Mr. Rachlis
23 that if the only secured claim is avoided, then the proceeds
24 would go to the estate. I obviously dispute -- and it's not
25 really the place here -- of the basis on which he suggests it

1 might be avoided.

2 But the purpose of the process, as we understand it,
3 is to get that potential objection out, whether it's going to
4 be made or not made, so that we can then litigate it and move
5 forward. Because if he's not going to make that claim, then
6 we should just get paid.

7 THE COURT: Right. Okay.

8 So, then I think the dispute becomes the timing of
9 that particular, for lack of a better word, battle. Right?
10 When should the receiver be required to disclose or to inform
11 me and the claimants that the receiver does not oppose or does
12 oppose that particular claim, and what sort of information
13 should the parties be required to exchange in advance of that
14 or as part of that determination?

15 And as I see it from the motion, the receiver is -- I
16 know that there are various kind of details, but one of the
17 main -- one of the overall reasons that the receiver gave is
18 that the receiver obviously is very busy now with regard to
19 the properties in the first tranche and reviewing those.

20 Mr. Rachlis, what sort of -- it seems, though, that,
21 as the secured lenders have noted, that you already have --
22 the receiver does have a ton of information about the claims,
23 this property. What other information would the receiver
24 require to make a determination as to whether or not it is
25 going to oppose the single claim on a particular property?

1 MR. RACHLIS: In addition to what has been
2 provided -- which I note in follow-up to what is Footnote 3 of
3 the joint motion on this issue, where it is noted that the --
4 that not all the documents have been submitted by all of these
5 single-lien claimants; that one has indicated that it has
6 provided all, the other has just indicated the majority of
7 them have been provided.

8 So, I note that sort of as a starting point. But the
9 bottom line here is we all need to complete -- make sure we
10 have all of those documents.

11 Number two, like the standard discovery issues that
12 all of the claimants are involved with in this -- in the
13 claims process, there are some select document requests and
14 interrogatories, most of them dealing with due diligence types
15 of issues, which we would expect to be answered.

16 We then expect to get subpoenas -- done jointly,
17 actually, between these stakeholders -- in the sense -- with
18 going to the loan originators and the title companies.

19 If that information is collected and if we all can
20 work together to get that to those entities -- we'll get that
21 all done at one shot, at one time -- that collection of
22 information would be complete and allow a determination --
23 allow a review and determination -- that would lead to either
24 disclosure of an avoidance on these, on the issue of inquiry
25 notice, or it will lead to a notice that there are -- there

1 will not be any such challenge.

2 So, it is that collection -- it is that remaining
3 collection -- of documents combined with a review of them in
4 order to make that determination. That's the upfront work
5 that would need to be done.

6 THE COURT: And, Mr. McClain, I looked at Exhibit A
7 and Exhibit B to the motion. One is the claimants' proposed
8 schedule and the other one is the receiver's proposed
9 schedule. Why should I adopt the claimants' proposed schedule
10 over the receiver's proposed schedule?

11 MR. McCLAIN: Your Honor, I will answer your
12 question. I just wanted to address one point that Mr. Rachlis
13 made when he cited Footnote 3, indicating that one of the
14 claimants has not provided all the information. That's kind
15 of a mischaracterization of the facts.

16 What Footnote 3 is referring to is all the documents
17 requested by the standard discovery requests. U.S. Bank has,
18 in fact, provided all documents that were part of the proof of
19 claim, and additional documents were provided at the outset of
20 the case in September 2018, which was the majority of the
21 underwriting files.

22 So, the receiver has in his possession all of the
23 documents that he requested as part of the claims process that
24 he identified as the necessary documents to evaluate and
25 determine the validity of these claims. I just wanted to

1 clarify that point.

2 Going to your point about why the Court should adopt
3 our process over the receiver's process, well, your Honor, I
4 think there's a couple fundamental differences between our
5 process and the receiver's process. One of the biggest
6 sticking points that we ran into over the past few months in
7 negotiation is the discovery. And our position is there's no
8 need for additional discovery at this point right now.

9 The receiver's had in his possession our documents
10 for over two years that were submitted as part of the claims
11 process. In addition to that, he has all of the documents
12 that are the Equitybuild documents. So, presumably, any
13 documents that he is seeking from us as part of this discovery
14 is part of the Equitybuild documents that he already has.

15 So, we just believe fundamentally it would be
16 inequitable, a waste of resources to engage in discovery now,
17 before there's an actual determination or disclosure by
18 Mr. Rachlis that he's -- or excuse me, Mr. Duff -- that he's
19 challenging our lien.

20 Compare that to the contested claims process where
21 it's known that there's a current dispute so you can just jump
22 right in to doing discovery. Here, we don't even know if
23 there is a dispute. So, we don't believe that we should
24 engage in additional discovery until the receiver takes the
25 time to review the documents he already has in his possession

1 to determine if he has a good-faith basis to challenge our
2 claims.

3 So, that's kind of one of the biggest framing issues
4 that led to discussion and the negotiations and kind of the
5 divide.

6 There's also other nuanced issues; for instance, the
7 holdback of fees. But it was really the discovery that was a
8 large issue and, then, the holdback of fees.

9 I'll pause here to see if you want me to discuss
10 anything specifically or if Mr. Napoli wants to supplement.

11 THE COURT: Mr. Rachlis, I guess, can you respond to
12 Mr. McClain's argument that the receiver doesn't need any
13 additional discovery, at least to make the preliminary
14 assessment of whether or not it's going to contest the claims.

15 MR. RACHLIS: Yeah.

16 That's based on the proposition that the receivership
17 has all the documents that had been identified. And Mr.
18 McClain cites to the EB library that's been set up, but the EB
19 library does not have the loan origination documents from the
20 loan originator that was working with these lenders, nor does
21 it have the title company documents. Those are -- that's
22 exactly the type of discovery that's being requested from --
23 essentially, from -- the standard discovery that's been
24 contemplated for all of the groups.

25 So, that is part and parcel of the standard inquiry

1 that is being done for everyone, and that doesn't escape
2 hereto. And, in part, it doesn't escape because we don't have
3 those documents.

4 So, in order to understand and make the proper
5 evaluation, which we hope can be done -- I mean, there's a
6 smaller universe of documents. That's clearly true. Because
7 there's not, like there is in Group 1, 170 different
8 claimants.

9 On the other hand, there are documents and materials
10 necessary to understand if there are going to be these
11 avoidance claims -- particularly, say, on reasonable reliance
12 or inquiry notice types of issues -- that are not in our
13 possession.

14 And, indeed -- and another point here, they
15 recognize -- I think as recognized by the participants on
16 this, as well, because at the back end, while they've put it,
17 you know, in the second half, if you will, after the notice is
18 sent out, they realized that that type of discovery from the
19 loan originators and title companies would be necessary.
20 We're saying do that up front and let's get that done, you
21 know, as quickly as we can, as early as we can, because that's
22 necessary for the review.

23 They're trying -- we don't have the documents, so it
24 would be difficult for us to be able to say that we've done
25 that review when we don't have them. And we do think it's

1 relevant to that inquiry.

2 MR. McCLAIN: Your Honor, I think the gating issue
3 for us is the disclosure by the receiver that he is, in fact,
4 going to contest the claim. He has in his possession all of
5 the documents that he wanted as part of the proof of claim.
6 And, so, now he's asking for more as a basis of a dispute,
7 which is backwards in how normal litigation goes. You file
8 your complaint -- and, again, we're not -- we understand we're
9 working in summary proceedings, we're not dealing with
10 complaints here; but here it's a disclosure that you're
11 challenging the lien -- and, then, you engage in the
12 discovery. That's how a normal litigation dispute progresses.

13 THE COURT: Mr. Hanauer, does the SEC take a position
14 on this issue?

15 MR. HANAUER: Thank you, your Honor.

16 For the most part, no. There are no investors
17 involved, so the SEC does not want to -- we'd rather not be
18 involved. We would just make the request that the procedures
19 employed for these single-claims properties be as efficient as
20 possible to keep costs down and with the least disruption as
21 possible to the investor claims process.

22 THE COURT: Let's talk about timing.

23 Mr. Rachlis, given the timing of the first grouping
24 and then the schedule for those other -- for the
25 multi-claim -- properties involving multiple claims, what sort

1 of timing do you envision or do you anticipate for a claims
2 resolution process with regard to the single-claim properties
3 to take place.

4 MR. RACHLIS: So, the proposal that we have included,
5 in summary form, would: One, we'd attempt to work on this.
6 So, if your Honor were to consider this a group, if you will,
7 this single-lien group, we would begin work on that if the
8 process was approved, you know, simultaneously with Group 1,
9 but making sure that we're not interfering with the completion
10 of the Group 1 process.

11 And what we would do in that context is: One, the
12 first -- and try and quickly with the -- working with the
13 other -- with the institutional lenders that are involved
14 here, try and get these subpoenas out quickly to the loan
15 originators and to the title companies. That's the -- that's
16 Point One.

17 Probably that's a 30-day process, but we would hope
18 that that could -- in other words, 30 -- not to get that out
19 in 30 days, but try and get responses back in some capacity,
20 you know, in a 30-day window or so.

21 We would want to then look at that information, as
22 well as the information that's been provided by these
23 claimants, and come back to your Honor, at this point, I would
24 say sometime in January, maybe January -- towards the end of
25 the month -- and give you a status report and these claimants

1 a report, in order to let them know where we're at in terms of
2 getting responses from these subpoenas and getting through the
3 process of reviewing these claimant -- the materials that have
4 been provided.

5 We think that if we are able to do that, we'd be in a
6 position to be able to tell your Honor how soon thereafter
7 we'd be in a position to provide either notices of no dispute
8 or notices of avoidance that would trigger what we propose to
9 be, you know, a 60-day -- based on the these single-lien
10 claimants' request, I think there's no disagreement that they
11 look at a 60-day process for purposes of going through
12 contested claims. And, then, it's twenty -- and then the same
13 sort of process for position statements and things of that
14 nature.

15 So, it is an effort to: One, work in parallel with
16 the Group 1 process; an effort to work cooperatively, quickly
17 with the single-lien institutional investors; and to report
18 back, you know, in the -- call it in approximately 45 days or
19 so, but it would be sometime by mid-January.

20 I think we can make progress in that regard. That
21 will give enough time to get subpoena answers, we believe, as
22 well as to go through -- at least get a better handle on the
23 documents, and then be in a position to inform the Court.

24 So, it's within that balance that we think that we
25 are prepared to do that and devote, you know -- without trying

1 to -- and we also want the Court to know if we believe that
2 this has created more of a problem, if going through this has
3 either elicited to -- you know, there are 28 different
4 properties here.

5 So, in going through those, if there's an issue, we
6 want to flag it. We want the Court to know and the lenders to
7 know that, you know, it's taking longer or not.

8 But we do think that would be a -- basically, a good
9 way to keep everyone abreast of those efforts while still
10 focusing on Group 1.

11 So, that is our general effort and proposal here to
12 try and get this group of properties moving and moving,
13 essentially, you know, right away through the kind of joint
14 issuance of these.

15 THE COURT: All right.

16 And do you anticipate needing the claimants to answer
17 some of the standard discovery requests?

18 MR. RACHLIS: Yes. We did specifically identify
19 those in our proposal. There's very few -- not all of them,
20 but three or four different requests or one or two
21 interrogatories that, basically, we would want to be addressed
22 during this time that we are getting the subpoenas answered
23 and beginning the reviews of the -- of what is intimated on
24 the claims. So, the answer is, yes, in a modified form.

25 THE COURT: Mr. McClain?

1 MR. McCLAIN: Your Honor --

2 THE COURT: Talk to me about timing.

3 MR. McCLAIN: This is why we believe that our
4 proposed process is a better solution, is it's more
5 streamlined. Right now, it sets the deadline of 28 days after
6 your Honor approves our process of the receiver then having to
7 review the documents he's had in his possession for over two
8 years and determine whether he does have a good-faith basis to
9 challenge our liens. And, then, if he discloses that, then,
10 your Honor, we believe that there's discovery that the
11 receiver can take based on that disclosure.

12 And, so, we would propose the timing to be how we set
13 -- and the format -- how we set forth in our proposal.

14 In terms of addressing the proposal that Mr. Rachlis
15 just laid out, your Honor, we're concerned that there's just
16 going to be continuous delay here. This is exactly the
17 process that was proposed by the receiver in the joint motion,
18 which is we're going to endeavor to do this, we're going to
19 endeavor to do this as quickly as we can, and then we're going
20 to come back to the Court and report on our progress.

21 Your Honor, we need to get these two matters moving
22 along. And, so, we would request, if the Court is going to
23 honor the structure that the receiver is going to propose,
24 which we hope it doesn't, that there be much shorter time
25 frames here so we can get to a quicker resolution. I think

1 that's in all the -- our claimants', as well as the estate's,
2 interest to resolve this as quickly as possible.

3 THE COURT: Okay.

4 MR. McCLAIN: I ask Mr. Napoli to supplement if he
5 wants to.

6 MR. NAPOLI: Michael Napoli, your Honor.

7 One of the things that we're concerned about is there
8 is no deadline. It's, well, it will be two months; and, then,
9 we'll do a report; it may be another 60 days. We really
10 believe that there needs to be a hard deadline, otherwise, you
11 know, the work will consume whatever time it's allotted to.

12 As Mr. McClain notes, we submitted our proof-of-claim
13 documents in July of 2019, more than two years ago. And these
14 are the documents the receiver told us he needed in order to
15 make this type of determination. And now we're being told
16 that we're going to have to wait another 60, 120 days, while
17 he gathers more documents, which I don't understand because if
18 it's notice -- really bad evidence, if he thinks we're on
19 notice of anything or we have knowledge of anything ought to
20 be -- evidence of that would be in our files, not in some
21 other file. I mean, what a loan originator or title agent
22 might know is not anywhere near the same thing as to what we
23 would know or we would have evidence of.

24 I would point out for both my client and Mr.
25 McClain's client, that we are several steps assignees down in

1 securitization trusts. We had no contact with loan
2 originators or title companies.

3 So, we're being asked to hold up on things that would
4 not in the ordinary course ever make it to us, which I just
5 think we need to have a deadline that needs to be stuck to so
6 Mr. Duff and Mr. Rachlis can make whatever claims they are,
7 and we can litigate those as necessary.

8 MR. RACHLIS: Your Honor, may I make a few points in
9 response?

10 THE COURT: Go ahead.

11 MR. RACHLIS: Your Honor, in terms of discovery, we
12 originally, back when we had proposed that we would review all
13 the claims -- and, you know, that was going to take a year or
14 longer than that -- these same institutional investors had
15 gone around and said, no, that's not right. We had sought a
16 stay. Judge Kim entered a stay. Then we entered into lengthy
17 discussions about a claims process that would involve
18 discovery. Because during that -- during the period of time
19 that the receiver originally would look at these issues, they
20 could -- the receiver has the right, if not the obligation, to
21 seek discovery on various issues that it deems relevant.

22 So, the proof of claim is not the end of the story.
23 The discovery was to occur during the claims process.

24 These claims are part of the claims process. They
25 may have -- they may be not of the same number of claimants,

1 but they are still part of a process that always engendered
2 there would be discovery.

3 As to the issues that are being identified here, if
4 it is, as stated by Mr. Napoli, that the correspondence and
5 other information from the loan originators is as said, then
6 certainly that would be relevant to a decision that would be
7 made. We don't have that information. We don't know that
8 that is accurate or complete in terms of what is in the loan
9 origination files or in the title company files, which is why
10 that process is probably -- that's set forth as part of this
11 process as a whole. We've set forth that title companies
12 would be subject to subpoenas. It's one of the one items that
13 are out there. Loan originators are the same type.

14 So, here, the type of discovery would always be
15 contemplated. We recognized that through this claims process
16 we've gone through, you know, detailed types of discussions in
17 order to somehow set forth how these claim disputed process
18 would go. It was never to sacrifice there would be a need for
19 discovery. There was always going to be, during the claims
20 process, based on the way this has come out, some discovery.

21 So, we do think it's relevant. Well, it was always
22 contemplated and would be relevant to trying to get to the
23 conclusion, even on these claims, as well. So, I don't know
24 exactly that those are strong arguments in support of the
25 process that's being advocated by the claimants.

1 In terms of the idea of timing, you know, it is
2 difficult. Because we have the current Group 1 activity, we
3 certainly recognize that there is a lot going on that we want
4 to address.

5 We thought that having a date out there of sometime
6 in the latter part of January is a date. It's a date of
7 relevance that does provide both the Court, these
8 institutional investors and the receiver a target date for
9 purposes of getting the discovery completed and looked at, and
10 updating the Court in that regard. So, I don't think that --
11 it's not fair to characterize us as without any date.

12 And as we indicated, we are hoping that this would
13 all be completed in conjunction with and parallel to the
14 completion of the Group 1 -- the group -- the process for
15 Group 1 claimants. So, those dates are present. Those dates
16 have been articulated.

17 I do think that there are some exigencies that we
18 don't control, that we thought would be -- allow us to be able
19 to report on this in the later January time period and, then,
20 come with a more precise date that would allow for the
21 completion of that proceeds. So, we do think that there are
22 more firm dates than are being characterized here.

23 THE COURT: All right. Thank you.

24 So, with regard to the properties identified in the
25 joint motion to determine claims process for single-claim

1 properties, that's Document 1073, I'm opening up the process
2 officially. Start your engines. It's open as of today. And
3 this is how it's going to go: By no later than November 30th,
4 I want the receiver, in conjunction with the claimants, to
5 send out third-party subpoenas to the title companies and loan
6 originators.

7 The claimant, I want them to answer the Request Nos.
8 6, 7 and 8 and Interrogatory 5 of the standard discovery by
9 December 10th.

10 We will have a status hearing on January 28th at
11 10:00 a.m. via videoconference.

12 From that date forward, there will be -- to the
13 extent necessary, there will be 60 days of discovery, again,
14 to the extent necessary.

15 During those 60 days, discovery shall be as set forth
16 in the Federal Rules, except -- and here I'm reading from Page
17 4 of Exhibit B, but I'm going to modify it -- each party will
18 be limited to five additional interrogatories. Each party
19 will be limited to three additional requests for production.
20 I am going to allow requests for admission up to 12, without
21 subparts. Each party will be limited to three depositions.
22 There will be no third-party discovery, except for title
23 companies and loan originators without leave of Court.
24 Neither the receiver, nor any Rule 30(b)(6) representative of
25 the estate may be deposed, because I don't think that's going

1 to provide any sort of relevant information -- relevant
2 factual information anyway. No expert discovery will be
3 permitted without leave of Court.

4 I'm going to set April 29th as the deadline for the
5 receiver's position paper with regard to its position with
6 regard to the claims that are at issue with regard to the
7 properties.

8 And, then, after that, once that is done, we will
9 have another status hearing in May, immediately after the
10 submission of that report, May 6th at 9:00 a.m., by
11 videoconference. And at that point, I think we'll have -- all
12 of us will have -- an idea as to how many of these claims will
13 be disputed, on what grounds and what sort of schedule needs
14 to be set forth going forward.

15 I think that while it does mean that Mr. Rachlis and
16 the people in his firm will be incredibly busy during this
17 time, I think that that should be enough time for them to do
18 the work.

19 And I see that Ms. Wine and Mr. Duff are on the line
20 and they're not -- they haven't fainted yet. So, I think that
21 that seems workable.

22 (Laughter.)

23 THE COURT: That way, we do have a date by which the
24 claimants will have an idea as to whether or not the receiver
25 actually will object or will not object. And it gives the

1 receiver some discovery. The discovery that it needs to make
2 sure that he is satisfying his duties to the estate. And it
3 keeps the case moving forward with regard to those single
4 claims.

5 MR. RACHLIS: Your Honor, may I ask for one
6 clarification?

7 THE COURT: Yes.

8 MR. RACHLIS: We had -- part of -- I think all of the
9 proposals had asked that there be a referral to Judge Kim for
10 purposes of discovery and settlement on this grouping. Would
11 your Honor's order also make that referral at this point in
12 time?

13 THE COURT: I will. I'll go ahead and refer this.
14 Basically, all of discovery in this case generally has been
15 referred to Magistrate Judge Kim, who has graciously agreed to
16 oversee the discovery in this case -- I will have to explain
17 to him why I'm vacating one of his prior orders, but I'll take
18 care of that -- and for settlement, as well.

19 MR. RACHLIS: Excellent. Thank you, your Honor.

20 THE COURT: Is there anything else that I can address
21 for the parties today?

22 MR. McCLAIN: Your Honor, I just want to clarify,
23 what format is the position paper supposed to be in from the
24 receiver?

25 THE COURT: To the extent that the receiver is not

1 going to oppose -- object to the claim, it will be one line
2 that receiver does not object to the claim. To the extent the
3 receiver objects to the claim, it will set forth the basis for
4 the receiver's objection.

5 MR. McCLAIN: So, factual and legal basis?

6 THE COURT: Yes.

7 MR. McCLAIN: Thank you, your Honor.

8 THE COURT: Very good. Thank you.

9 MR. STEIN: Your Honor?

10 THE COURT: Yes.

11 MR. STEIN: My apologies. Max Stein on behalf of
12 certain of the individual investors.

13 I wondered if it might make sense to schedule another
14 status like this one for late January. I was going to suggest
15 around January 20th. Under the new schedule, that will be
16 around when we would be completing expert discovery, and that
17 way there would be a date at which any new issues -- I'm not
18 anticipating any, but I've now been in this case long enough
19 to know that there may be some -- could be raised with your
20 Honor.

21 And I further suggest that they be raised through a
22 joint status report, the respective positions, as opposed to
23 through a motion that then inadvertently gets addressed in the
24 way the Court would normally address them and create some
25 confusion.

1 THE COURT: All right. Well, I've already set a
2 status for January 28th, right, at 10:00 a.m. So, we'll do
3 that.

4 And, then, I think that's a good idea, Mr. Stein.
5 I'd like the parties who are involved in Group 1 to submit a
6 joint status report to me by January 25th.

7 MR. STEIN: Thank you, your Honor.

8 THE COURT: All right. Thank you. Have a very good
9 Thanksgiving, everyone.

10 MR. RACHLIS: You too. Thank you, your Honor.

11 MR. GALE: Thank you, your Honor.

12 * * * * *

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14 I certify that the foregoing is a correct transcript from the
15 record of proceedings in the above-entitled matter.

16 /s/ Joseph Rickhoff
17 Official Court Reporter

November 23, 2021

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